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Boston Edison Company, Cambridge Electric Light Company,)	
and Commonwealth Electric Company)	D.T.E. 03-100
d/b/a NSTAR Electric)	
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NSTAR Electric (“NSTAR” or “the Company”) proposes to allow its residential and small commercial and industrial customers to purchase 25% of their total load from new renewable power sources, as defined in the Division of Energy Resources’ regulations, 220 C.M.R. §§ 14.00, *et seq.* See Letter from Robert N. Werlin to Mary L.

Cottrell dated October 16, 2003 (“NSTAR Filing”) at 3. The Company proposes to begin offering this service on January 1, 2004. *See id.* This service would be priced at the rate for generation (Standard Offer or Default Service), plus the cost of Renewable Energy Certificates (“RECs”). *See id.* The proposal would represent purchases of RECs in addition to those the Company is obligated to buy pursuant to the Renewable Portfolio Standard (“RPS”), 225 C.M.R. § 14.08.

CLF commends NSTAR for recognizing its customers’ desire to purchase renewable power and for proposing a program that would be in addition to the Company’s obligations under the RPS. We also commend NSTAR for utilizing the RPS eligibility standard to qualify renewable sources for inclusion in the Company’s program.

Adding substantial quantities of renewable resources to New England’s generation mix is essential to improving air quality and reducing the region’s contribution to the crisis of global climate change. Even with the improvement in emissions of federally regulated pollutants brought about by the increasing share of efficient, natural gas-fired generation in the region, dependence on any fossil fuel means that New England will continue to emit amounts of CO₂ that exacerbate the problem of climate change. The RPS is only one component of the Commonwealth’s policy commitment to addressing this threat. Others include the Emissions Standards for Power Plants (the “Filthy Five” regulations), 310 C.M.R. § 7.29, and the Climate Action Plan expected to be issued by Governor Romney in January.

Giving customers the opportunity to “buy green” is, moreover, a necessary step toward renewable resource development. If wind and other new renewable projects are to be built, they will require project financing in the form of long-term debt. Because

renewable generators are typically capital-intensive with low operating costs, the need for such financing is particularly acute. Long-term debt issued on the strength of an energy project's future operations, rather than on the creditworthiness of the project sponsor, requires a reasonably assured revenue stream. Opening opportunities for retail customers to buy renewable resources thus provides support for construction of additional new resources.

While NSTAR's decision to respond to this customer need is therefore sound, its proposed execution is fatally flawed in two key respects. First, it is inconsistent with the Commonwealth's policy to promote retail competition and with the Department's Order in D.T.E. 02-40-B (The Default Service Docket). Second, because NSTAR is conducting procurement of RECs for only a single year, 2004, it fails to provide the kind of long-term revenue stream necessary to support project financing and, therefore, to get renewable generation sources actually built.

NSTAR Green is Inconsistent with a Competitive Market.

As the Department has recognized, the Commonwealth's policy is to promote competition in the market for retail electric service.

[R]atepayers and the [C]ommonwealth will be best served by moving from (i) the regulatory framework extant on July 1, 1997, in which retail electric service is provided principally by public utility corporations . . . to (ii) a framework under which competitive producers will supply electric power and customers will gain the right to choose their electric power supplier.

D.T.E. 02-40-B at 4, *quoting* St. 1997, c. 164 § 1(c). In giving effect to this policy, the Department has sought "to put in place a market structure that allows efficient competition to thrive." *Id.* at 6.

The Department, moreover, has stated that this policy applies expressly to the provision of “green” options.

[T]he Department will not require distribution companies to offer ‘green’ default service options to their customers, because such options are more appropriately offered by the competitive market. However, a distribution company that seeks to provide a ‘green’ product to its default service (and standard offer service) customers may submit a specific proposal to the Department for our review. Such proposal must clearly demonstrate that providing such a product is compatible with the development of competitive options for the customer classes to which the product would be available.

D.T.E. 02-40-B at 46 (emphasis added). NSTAR Green fails this test.

NSTAR acknowledges this policy in its request for approval of the NSTAR Green Program, claiming that its proposal is consistent with it. *See* NSTAR Filing at 4. But NSTAR’S assertion defies logic. It bases its argument on two legs: first, that the market currently provides “few options” to residential and small commercial and industrial customers and, second, that NSTAR Green offers a choice not currently available. *See id.* Like a stool with only two legs, however, this argument falls of its own weight. The question is not whether NSTAR Green creates a product that is currently unavailable to the utility’s customers, but whether it creates an offering that is competitive.

The NSTAR Green program represents a single product offering by a monopoly distribution company. If it were implemented, customers would have no opportunity to choose among various green products representing different portions of their load, made up of different mixes of resources, with competitive prices. They would have, instead, one product as an alternative to the characteristics of NSTAR’s conventional power supply. There are sound reasons why the Commonwealth and the Department generally

favor competition over a monopoly services, and why renewable certificates specifically should be provided through a competitive market.¹

As a monopoly, NSTAR has no incentive to design a product that will appeal strongly to consumers: whether they sign up for NSTAR Green or not, they will remain distribution customers, and NSTAR will earn no incremental profit from those who do. Competitive suppliers, on the other hand, survive by designing green products that customers will choose, and they are likely to offer more than a single product to attract a broader spectrum of customers. For example, under Massachusetts Electric Company's GreenUp Program,² four competitive suppliers offer a total of eight different products. In addition, NSTAR lacks the experience and marketing expertise that competitive suppliers have acquired and that enable them to succeed. That NSTAR proposes to make available only one green option itself indicates the Company's lack of sophistication in the design and marketing of products with which others compete.

Not only does NSTAR Green fail to offer customers any choice, but, if approved, it is almost certain to freeze the market for green products and have the practical effect of barring potential competitors from entering. As the monopoly distribution company, NSTAR has an insurmountable marketing advantage through its existing contact with customers. No competitive supplier can – or would probably try to – challenge the Company's ability to sell its green offering through bill stuffers.

1. It is entirely possible that a centralized purchase by a distribution company may be an appropriate vehicle to achieve the targets set by the RPS. It is especially inappropriate, however, for procurement of an increment above the RPS. For that increment, a competitive market is clearly better suited to offer a spectrum of customer options and prices and stimulate the development of demand.

2. In the Massachusetts Electric GreenUp program, the utility has contracted with four third-party suppliers to market different green products to its residential and small commercial customers. The utility and suppliers cooperate in efforts to market the offerings through bill-stuffers, and customers have an opportunity to sign up for the green options through a "check-off."

Two specific characteristics of NSTAR Green will also dampen development of a competitive market for renewables. First, because it fails to meet the Green-E standard of serving a minimum of 50% of the customer's load, it is a relatively "low quality" product; second, it will be priced at cost. By capturing consumers who would choose a low rather than high quality offering, NSTAR will remove those customers from the market, shrinking the base that competitive suppliers could tap. And, by charging its customers at cost, the Company will necessarily beat any price that a competitive supplier could offer.

The effect of all these factors together will be to bar competition among green suppliers in NSTAR's service territory. Since that includes the greater Boston media market, which indirectly affects a substantial part of New England, the negative effects may actually extend beyond NSTAR's service territory and discourage competitors from entering the region as a whole. Contrary to NSTAR'S assertion, therefore, its Green Program will not "encourage the development of a renewables market." NSTAR Filing at 4. Instead, it will prevent development of a competitive market for renewables from ever beginning in NSTAR'S service territory and discourage its development elsewhere in New England.

NSTAR Green Fails to Support Development of New Renewable Generation Projects in New England.

NSTAR has issued a Request for Proposals for New Renewable Certificate Supply Service dated September 17, 2003 ("RFP"); the RFP is part of a Request for Proposals for Power Supply for Default Service Customers and for New Renewable Certificate Supply Service. The RFP is attached as Appendix A to these comments. The

RFP seeks bids to supply the RECs necessary to meet the demand of customers who elect to participate in the NSTAR Green program during the calendar year 2004. It thus represents a commitment by NSTAR to purchase RECs for a maximum term of one year. In turn, suppliers selected under the RFP will also be likely to limit their purchases of RECs from renewable generators to – at most – a one-year term.

This one-year purchase commitment is inadequate to support long-term financing of wind and other renewable projects. The linchpin of project financing for renewable generators – and, in fact, for most independent power producers – is a long-term contract to purchase the output of the facility. In the case of renewable generators, this includes both energy and RECs. The recent history of renewable development in New England, where the market structure provides no incentive to any creditworthy entity to execute long-term contracts for energy or RECs, shows that in the absence such commitments, independent renewable generators will not be financed or built. The wind generators built recently in New England were typically developed by or with municipally owned utilities.

This regional experience is consistent with national data. A recent study found that out of more than 70 commercial scale wind projects in 19 states built since the year 2000, 96% had long-term power purchase contracts with utilities (including regulated utilities, public power utilities and utility affiliates assigned load by their parent companies). Moreover, New England currently suffers from several disadvantages not shared by other regions: projects are likely to be sited in or near populated areas, with a higher likelihood of permit challenges by neighbors; the renewable resource is of lower quality, for example, lower wind velocities or less frequent high velocities; and there is a

surplus of conventional power generation in the region. In light of these barriers, the need for long-term revenue certainty is especially acute.

CLF recognizes that the Department has not required long-term purchases for renewables for default service “because long-term contracts are not consistent with the uncertain nature of default service loads over an extended period of time.” D.T.E. 02-40-B at 46. Nonetheless, the Department has left the door open for such purchases. *See id.* And encouraging development of new renewable resources is, along with promotion of competition, an important component of the Commonwealth’s energy policy. *See* M.G.L. Ch. 25, § 11F (the Renewable Portfolio Standard). As stated above in these comments, renewable generation itself is also an element in a portfolio of actions by the Commonwealth to address the crisis of global climate change.

CLF believes that renewable generation projects will be built in New England only if the regulatory structure changes to encourage long-term purchases of RECs, as well as energy. Development of new renewable sources of energy will reduce air pollutant emissions and forms a critical part of any realistic strategy to address the threat of climate change. In addition, renewables have economic value to consumers as a hedge against the risk (and the current reality) of high natural gas prices. *See Quantifying the Value that Wind Power Provides as a Hedge Against Volatile Natural Gas Prices*, Lawrence Berkeley National Laboratory, June 2002, In the *Proceedings of WINDPOWER 2002, June 2-5, 2002, Portland, Oregon* (<http://eetd.lbl.gov/EA/EMP>).

CLF believes it is critical, in implementing and strengthening the Commonwealth’s response to climate change, that every state agency utilize its authority to encourage the development of renewable resources to the maximum extent consistent

with its other legal mandates. CLF urges the Department to examine the importance of long-term contracting for the growth of renewable generation in this or, preferably, another docket targeted at those issues. Specifically, the Department should consider how encouraging long-term contracting for RECs could be integrated with its other policies. CLF believes positive action by the Department is important to capture both the environmental and consumer advantages offered by renewable generation.

Conclusion

For the foregoing reasons, CLF urges the Department to disapprove NSTAR Green and encourage or require the Company to file a proposal that is consistent with the policy of promoting competition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have served a true copy of the foregoing Comments of Conservation Law Foundation, Inc. this 18th day of December 2003 on the persons listed below by first-class mail, postage prepaid.

Alan Wilson
Attorney for Conservation Law Foundation

Brian, please add complete service list.